

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CHRISTOPHER M. JONES, §
§
Petitioner, §
§
v. § **Civil Action No. 3:06-CV-1441-L**
§
NATHANIEL QUARTERMAN, Director §
Texas Department of Criminal Justice, §
Correctional Institutions Division, §
§
Respondent. §

ORDER

This is a habeas case brought under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On September 5, 2006, the Findings and Recommendation of the United States Magistrate Judge (“Report”) were filed. Petitioner filed Plaintiff’s[sic] Objections to Findings and Recommendation of the United States Magistrate Judge (“Objections”) on September 15, 2006.

In 1993, Petitioner was convicted of murder and sentenced to 20 years confinement. His conviction and sentence were affirmed on direct appeal on April 27, 1995. Petitioner filed applications for post-conviction relief in state and federal court. Both were denied. Petitioner filed this federal petition for writ of habeas corpus on August 10, 2006.

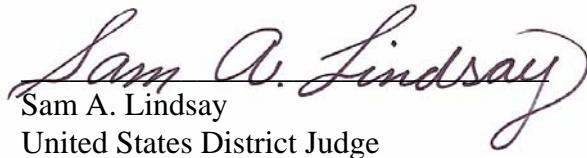
The magistrate judge found that the Fifth Circuit has not issued an order authorizing the court to consider this successive application for habeas relief, as required by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). 28 U.S.C. § 2244(b)(2). The magistrate judge

recommends that Petitioner's application for writ of habeas corpus be dismissed without prejudice pending review by a three-judge panel of the court of appeals.

In his Objections, Petitioner admits that his application has not been reviewed by the court appeals. He maintains, however, that the application should not be dismissed as the district court has discretion to review his application on the merits in the interest of justice. Alternatively, Petitioner argues that the court can transfer his application to the Fifth Circuit Court of Appeals for consideration.

After making an independent review of the pleadings, file and record in this case, the findings of the magistrate judge, and having considered Petitioner's objections thereto, the court determines that the findings and conclusions of the magistrate judge are correct. They are therefore accepted as those of the court. Accordingly, the court **overrules** Petitioner's objections to the Report; **grants** Petitioner's request that the court transfer his petition for writ of habeas corpus to the Fifth Circuit Court of Appeals; and **transfers** Petitioner's Petition for a Writ of Habeas Corpus by a Person in State Custody to the United States Court of Appeals for the Fifth Circuit for it to determine whether Petitioner is allowed to proceed with this successive appeal.

It is so ordered this 27th day of September, 2006.



Sam A. Lindsay
United States District Judge